IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 7344 OF 1999

Col.A.K. Joshi (Retd) .. Petitioner

versus

Union of India & Others .. Respondents

...

Mr.S.P. Saxena for the petitioner.

None for the respondents.

CORAM : S.B. MHASE AND

D.G. KARNIK, JJ

DATED : 31st January 2006.

ORAL ORDER :- (Per D.G. Karnik,J)

1. Heard learned counsel for the petitioner. None present for the respondent.

2. By this petition, the petitioner seeks a mandamus directing the respondent to offer re-employment to the petitioner in accordance with Army

Instructions No.1/S/80 dated 4th February 1980.

3. The petitioner was employed as a Colonel in the Indian Army. The petitioner was to retire on 31st December 1997. On a day prior to his retirement, the charge-sheet was issued to the petitioner for certain alleged misconduct. Learned counsel for the petitioner submits that petitioner has been exonerated in the Court Martial proceedings by an order dated 14th June 1998 and no proceedings of whatsoever nature were pending against him on the date of the filing of the petition.

4. Army Instructions No.1/S/80 on 4th February 1980 lay down the rules regarding the re-employment of retired Army Personnel. Under the rules, a person who retires from the Army before attaining the age of 55 years holding the rank of a full Colonel or below or is entitled to offer himself for re-employment. Eligibility of consideration of such offer of re-employment is that the services of the officer must not have been terminated as a result of an (a) an adverse report, (b) disciplinary grounds, (c) misconduct or (d) inefficiency. Learned counsel for the petitioner says that the services of the petitioner

were not terminated on either of the four grounds but he superannuated on 31st December 1997. In the disciplinary proceedings/Court Martial proceedings the petitioner has been exonerated. He was therefore, eligible for being considered for being re-appointed to an appropriate post under the Army Instructions referred to above. According to the learned counsel for the petitioner, he was not considered for re-appointment firstly because there were Court Martial proceedings pending against him and secondly because Brig N.S.Sahaee who was the immediate superior of the petitioner had a grudge against the petitioner and had not submitted the confidential reports of the petitioner which were required to be placed before the Selection Committee.

5. We notice that Mr.Sahaee has not been joined as party to the petition. The allegations against Mr.Sahaee therefore, cannot be considered in this petition.

6. In our view, the Army Instructions dated 4th February 1980 do not confer a right of re-appointment. They are only enabling guide-lines enabling the officers sitting before the age of 55 years to apply

for re-appointment. Such re-appointment is to be considered by the Selection Committee on its own merits. No mandamus can be issued for re-appointment. It is settled position that even after a candidate is selected for a post, no mandamus can be issued for his appointment unless an appointment has been made. In the present case, the petitioner was not even selected. Therefore, there is no question of granting mandamus directing re-appointment of the petitioner.

7. Under the Army instructions dated 4th February 1980, no Officer re-employed under the said instructions shall be retained beyond the age of 56 years. The petition was filed in the year 1999 when the petitioner was 53 years old. Today, the petitioner has crossed the age of 56 years. Therefore, today no direction can be issued to consider the case of petitioner for appointment on its own merits.

8. In the circumstances, there is no merit in the petition which is hereby dismissed. In view of the act that the respondent is not present before the Court at the hearing, there shall be no order as to costs.

(D.G. KARNIK, J) **(S.B. MHASE, J)**